

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

74-1193

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

DOCKET NO. 74-1193

UNITED STATES OF AMERICA
PLAINTIFF-APPELLEE

V.

CHARLES HARRIS
DEFENDANT-APPELLANT

APPENDIX TO BRIEF OF DEFENDANT - APPELLANT

THOMAS D. CLIFFORD
COUNSEL FOR DEFENDANT - APPELLANT
770 CHAPEL STREET
NEW HAVEN, CONNECTICUT



TABLE OF CONTENTS

	PAGE
INDICTMENT.....	app. 1
DOCKET ENTRIES.....	app. 3
ORAL DECISION RE MOTION TO SUPPRESS.....	app. 13
ORAL DECISION RE RENEWED MOTION TO SUPPRESS.....	app. 21
RE-DIRECT EXAMINATION OF ROBINSON RE BANK SURVEILLANCE PHOTO.....	app. 28
DIRECT EXAMINATION OF COHENS RE PHOTO...	app. 35
DIRECT EXAMINATION OF COHENS FOR IMPEACHMENT OF PRIOR TESTIMONY.....	app. 41

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA :

v. :

CRIMINAL NO. 13,223

CHARLES HARRIS and RONALD :
OSWALD CATRON

I N D I C T M E N T

THE GRAND JURY CHARGES:

COUNT ONE

On or about November 6, 1972, at Derby in the District of Connecticut, CHARLES HARRIS and RONALD OSWALD CATRON, the defendants herein, and others unknown to the Grand Jury at this time, did by force and violence and by intimidation take from the person and presence of another money belonging to and in the care, custody, control, management and possession of the Derby Savings Bank, Derby Avenue, Derby, Connecticut, the deposits of which were then insured by the Federal Deposit Insurance Corporation, Certificate No. 18192-7, dated December 23, 1969, in violation of Title 18, United States Code, Section 2113(a) and 2(a) and 2(b).

COUNT TWO

On or about November 6, 1972, at Derby in the District of Connecticut, CHARLES HARRIS and RONALD OSWALD CATRON, the defendants herein, and others unknown to the Grand Jury at this time, did take and carry away, with intent to steal, money in excess of One Hundred Dollars (\$100.00) belonging to and in the care, custody, control, management and possession of the Derby Savings Bank, Derby Avenue, Derby, Connecticut, the deposits of which were then insured by the Federal Deposit Insurance Corporation, Certificate No. 18192-7, dated December 23, 1969, in violation of Title 18, United States Code, Section 2113(b) and 2(a) and 2(b).

COUNT THREE

On or about November 6, 1972, at Derby in the District of Connecticut, CHARLES HARRIS and RONALD OSWALD CATRON, the defendants

herein, and others unknown to the Grand Jury at this time, did by force and violence and by intimidation take from the person and presence of another, money belonging to and in the care, custody, control, management and possession of the Derby Savings Bank, Derby Avenue, Derby, Connecticut, the deposits of which were then insured by the Federal Deposit Insurance Corporation, Certificate No. 18192-7, dated December 23, 1969, and the defendants, CHARLES HARRIS and RONALD OSWALD CATRON, in committing the aforesaid acts, did put in jeopardy the lives of Daniel Buckley, Judy Bishop, June Davies and Dorothy Lonergan by the use of a dangerous weapon, that is, an automatic pistol, in violation of Title 18, United States Code, Section 2113(d) and 2(a) and 2(b).

A TRUE BILL

/s/ Joseph R. Reilly
FOREMAN

STEWART H. JONES
UNITED STATES ATTORNEY

/s/ Thomas F. Maxwell, Jr.

THOMAS F. MAXWELL, JR.
ASSISTANT UNITED STATES ATTORNEY

**CRIMINAL DOCKET
UNITED STATES DISTRICT COURT**

D. C. Form No. 100 Rev.

TITLE OF CASE		ATTORNEYS
THE UNITED STATES		For U.S.:
vs.		Stewart H. Jones, U.S. Atty.
CHARLES HARRIS, EARL HARRIS,		Thomas F. Maxwell, Asst. USA
also known as "Giant", CARL		Federal Building
GRAY, also known as Carl Williams		New Haven, Conn.
James, also known as Carl W. James,		
and RONALD OSWALD CATRON		
CATRON: Leander C. Gray		
361 Sherman Ave.		For Defendant:
New Haven, Conn.		Thomas D. Clifford (appt)
C. HARRIS:		Federal Public Defender
GRAY: David Rosen (appt in Crim. #13,205)		770 Chapel St.
265 Church St.		New Haven, Conn.
New Haven, Conn.		John Acampora (appt) (Crim. #
CATRON: Joseph H. Harris, Jr. (Appt)		109 Church St. 13,205)
385 Orange St. Withdrawn		New Haven Conn.
New Haven, Conn.		

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	RBC.	DISB.
J.S. 2 mailed	Clerk				
J.S. 3 mailed	Marshal				
Violation U. S. Code	Docket fee				
Title 18					
Sec. 2113(a), 2(a) & 2(b),					
2113(b), 2(a) & 2(b),					
2113(d), 2(a) & 2(b) &					
2113(c), 2(a) & 2(b).					

DATE	PROCEEDINGS
12/13	The Grand Jury at New Haven returned a True Bill of indictment charging violation of 18 USC 2113(a), 2(a), 2(b), 2113(b), 2(a), 2(b), 2113(d), 2(a), 2(b) and 2113(c), 2(a), 2(b) - 4 Counts. Count 1 - 2113(a), 2(a) & 2(b), taking by force, violence and by intimidation from person and presence of another, money belonging to and in care of bank, deposits of which were then insured by FDIC; Count 2 - 2113(b), 2(a) & 2(b), taking and carrying away, with intent to steal, money in excess of \$100.00, belonging to and in care of bank insured by FDIC; Count 3 - 2113(d), 2(a) & 2(b), in committing acts alleged in Count 1, putting in jeopardy the life of another by use of a dangerous weapon; Count 4 - 2113(c), 2(a) & 2(b), wilfully and unlawfully possessing a sum of \$400.00, which had been taken and carried away, with intent to steal and purloin from bank, deposits of which were insured by FDIC, knowing said money to have been so taken. (Counts 1, 2 and 3 involve C. Harris E. Harris and R. Catron only. Count 4 involves C. Gray only.) Bench Warrant may issue for all 4 defendants. Bond set at \$50,000.00 for each defendant, with full surety. Newman, J. 12-13-72.
12/14	Bench Warrant issued in duplicate and with certified copy of indictment handed U. S. Marshal for each defendant.

DATE	PROCEEDINGS
1972	
12/29	CATRON: U. S. Magistrate's Papers, filed: Record of Proceedings, two photographs another photo attached to Affidavit of Herbert D. Northcutt, Jr., Warrant for Arrest, Appearance Bond in the amount of \$5,000 (personal surety) executed in Boston, Bail Reform Act No. 2, Appearance of Salim H. Shakur, Esq. for defendant, Oat' of Special Agent of FBI Whalen, Appearance Bond in the amount of \$10,000 (personal surety) executed in Boston, Mass. Bail Reform Act Form No. 2, CJA Form 20 appointing Salim H. Shakur, Esq. of Roxbury, Mass.
1973	
1/2	C. HARRIS: PLEA: Plea of not guilty entered to Counts 1, 2 and 3. Case continued for trial on altered appearance bond of \$10,000.00, without surety; condition of bond is that defendant live at his mother's residence, 14 Olson Drive, Ansonia, Conn. and that defendant call U. S. Attorney's Office every Monday, Wednesday and Friday morning at 10:00 A.M. Ten days allowed to file motions, to be heard on 1/22/73. Newman, J. m-1/2/73.
1/2	GRAY: PLEA: Plea of not guilty entered to Count 4. Defendant's motion to change bond, denied. Case continued for trial on same bond. Motions to be filed and to be heard on 1/22/73. Newman, J. m-1/2/73.
1/2	C. HARRIS: Appearance Bond in the amount of \$10,000.00, personal surety, filed and approved with condition that defendant reside with his mother at 14 Olson Drive, Ansonia, Conn. and that defendant shall call U. S. Attorney's Office every Monday, Wednesday and Friday at 10:00 A.M. Newman, J. m-1/3/73.
1/2	E. HARRIS: PLEA: Over to 1/8/73. Newman, J. m-1/2/73.
1/8	C. HARRIS: Defendant's motion for Discovery and Inspection, filed.
1/8	C. HARRIS: Defendant's Motion for Production of Evidence Favorable to the Accused, filed.
1/8	C. HARRIS: Defendant's Motion for Production at Trial, filed.
1/8	CATRON: PLEA - Court appoints Joseph Licari, Jr. to represent defendant. Plea of not guilty entered to Counts 1, 2 and 3. Case continued on same bond for trial. Two weeks to file motions. Newman, J. m-1/8/73.
1/8	E. HARRIS: PLEA - Plea of not guilty entered to Counts 1, 2 and 3. Case continued on same bond for trial. Newman, J. m-1/8/73.
1/8	CATRON: CJA Form 20 appointing Joseph Licari, Jr., Esq. to represent defendant filed. Newman, J. Copies distributed.
1/8	GRAY: Marshal's Return Showing Service, filed: Warrant for Arrest.
1/8	C. HARRIS: Marshal's Return Showing Service, filed: Warrant for Arrest.
1/15	E. HARRIS: Marshal's return showing service, filed: Warrant for Arrest.
1/15	CATRON: Appearance of Joseph A. Licari, Jr., Esq., entered for the defendant. (Notice for 1-22-73).
1/15	CATRON: Motion for Production at Trial, filed by defendant.
1/15	CATRON: Motion for Production of Evidence Favorable to the Accused, filed by defendant. (Notice for 1-22-73)
1/15	CATRON: Motion for Discovery and Inspection, filed by defendant. (Notice for 1-22-73)
1/16	GRAY: Defendant's Motion for Production of Evidence Favorable to the Accused, filed.
1/16	GRAY: Defendant's Motion for Production At Trial, filed.
1/16	GRAY: Defendant's Motion for Bill of Particulars, filed.
1/16	GRAY: Defendant's Motion for Discovery and Inspection, filed.
1/18	E. HARRIS: Defendant's Motion for Production of Evidence Favorable to the Accused, filed.
1/18	E. HARRIS: Defendant's Motion for Reduction of Bail, filed by defendant.
1/18	E. HARRIS: Motion for Separate Trial, filed by defendant.
1/18	E. HARRIS: Defendant's Motion for Production at Trial, filed.
1/18	E. HARRIS: Defendant's Motion for Discovery and Inspection, filed.
1/18	CATRON: CJA Form 21 authorizing private investigator Tibco, Inc., filed.
	Newman, J. m-
	(Continued)

DATE	PROCEEDINGS
1973	
1/22	C. HARRIS: Government's Response to Pretrial Motions of Defendant, filed.
1/22	E. HARRIS: Government's Response to Pretrial Motions of Defendant, filed.
1/22	GRAY: Bill of Particulars, filed by Government.
1/22	GRAY: Government's Response to Pretrial Motions of Defendant, filed.
1/22	CATRON: Government's Response to Pretrial Motions of Defendant, filed.
1/22	CATRON: Hearing held on defendant's (1) Motion for Production of Evidence Favorable to the Accused - denied, except to extent govt. agreed upon; (2) Motion for Discovery and Inspection - denied, except to government's compliance; (3) Motion for Production at Trial - granted, absent objection. Newman, J. m-1/22/73.
1/22	GRAY: Hearing held on defendant's (1) Motion for Discovery and Inspection - denied, except to govt's compliance; (2) Motion for Bill of Particulars - denied, except to item 3 govt to supplement; (3) Motion for Production at Trial - granted, absent objection; (4) Motion for Production of Evidence Favorable to the Accused - denied, except to extent govt agreed upon. Newman, J. m-1/22/73.
1/22	E. HARRIS: Hearing held on defendant's (1) Motion for Production of Evidence Favorable to the Accused - denied, except to extent govt agreed upon; (2) Motion for Reduction of Bail - denied; (3) Motion for Separate Trial - withdrawn; (4) Motion for Production at Trial - granted, absent objection; (5) Motion for Discovery and Inspection - denied, except to govt's compliance. Newman, J. m-1/22/73.
1/31	Ruling on Pre-Trial Motions, filed and entered, as follows: The motions of Catron, Gray and E. Harris for production of evidence favorable to the accused are denied except to the extent the govt has agreed to comply; the motions of Catron, Gray and E. Harris for production at trial are granted without objection; the motions of Catron, Gray and E. Harris for discovery and inspection are denied except to the extent the govt has agreed to comply; the motion of Gray for a bill of particulars is denied except for item 3, to which the govt has agreed to supplement its response; the motion of E. Harris for reduction of bail is denied; the motion of E. Harris for a separate trial is withdrawn. Newman, J. m-1/31/73. Copies mailed to counsel.
2/14	E. HARRIS: Court Reporter's transcript of proceedings held on January 22, 1973 (Plea), filed (Gale, R.).
2/14	CATRON: Court Reporter's transcript of proceedings held on January 22, 1973 (Plea), filed. (Gale, R.)
2/14	GRAY: Defendant's Motion to Reduce Bond, filed and So Ordered. Defendant be released on \$10,000.00 bond without surety. Newman, J. m-2/14/73. Copies mailed to counsel. Two certified copies handed to U. S. Marshal at New Haven.
2/15	Court Reporter's Transcript of proceedings held on January 22, 1973, filed. (Motions) (Russell, R.)
2/20	E. HARRIS: Motion for Change in Conditions of Custody, filed and So Ordered. Defendant upon his release from incarceration on 2/20/73 will reside with his mother in Ansonia, Conn; he shall contact his attorney once a day on each of the 7 days he is at liberty; he will be allowed to travel to see his children while at liberty; he will surrender himself at the U.S. Marshal's Office in New Haven on 2/27/73 at 10:00 A.M. for the purpose of returning to incarceration. Newman, J. m-2/20/73. Certified copies handed to U. S. Marshal at New Haven. Copies mailed to counsel.
2/20	GRAY: Appearance Bond in the amount of \$10,000.00, personal recognizance, filed and approved. Newman, J. m-2/20/73. Copy mailed to U. S. Attorney in New Haven.
2/28	E. HARRIS: Motion for Continuance of Change in Conditions of Custody, filed and So Ordered. The conditions imposed regarding the defendant's release from custody in Order of 2/20/73 shall also be incorporated in this Order; that defendant be continued at liberty in accordance with the Order and that defendant remain at liberty in lieu of bail until the 6th day of March, 1973 at 12:00 noon at which time he shall surrender himself at the U. S. Marshal's Office. Newman, J. m-2/28/73. Copies mailed to counsel. Certified copy handed to U. S. Marshal at New Haven.
	(over)

DATE	PROCEEDINGS
3/6	E. HARRIS: Motion for Continuance of Change in Conditions of Custody, filed and so ordered. Ordered that conditions imposed regarding defendant's release from custody in the order of 2/20/73 shall also be incorporated in order; that defendant be continued at liberty in accordance with the Order by the Court on the 20th day of February, 1973 and that defendant remain at liberty in lieu of bail until the 13th day of March, 1973 at 12:00 noon at which time he shall surrender himself at the U. S. Marshal's Office for the purpose of returning to incarceration. Newman, J. m-3/6/73. Copies mailed counsel. Certified copy handed U. S. Marshal at New Haven.
2/22	Court Reporter's Notes of proceedings held on Jan. 8, 1973, filed (Gale, R.)
3/28	Court Reporter's Notes of proceedings (Motions) held on Jan. 22, 1973, filed. (Gale, R.)
4/10	CATRON: CJA 21 approving the payment of \$255.60 to Ribco, Incorporated, Investigators, filed. Newman, J. Copies distributed.
4/26	HARRIS: Motion for Reduction of Bail, filed by defendant.
5/8	HARRIS: Hearing held on defendant's Motion for Reduction of Bail - Motion granted. Newman, J. m-5/8/73. Copies mailed to counsel.
5/11	HARRIS: Two certified copies of order reducing bond handed to U. S. Marshal at New Haven.
5/8	Court Reporter's Notes of proceedings held on May 7 1973, (Motion) filed. (Gale, R.)
5/11	E. HARRIS: Appearance Bond in the amount of \$50,000.00, personal surety, filed and Approved. Newman, J. m-5/11/73.
MX	
5/8/11	Marshal's Return Showing Service, filed: Motion for Reduction of Bail.
5/18	CATRON: Appearance of Leander C. Gray, Esq., entered for defendant
5/25	CATRON: Motion to Withdraw as Counsel for defendant, filed by Joseph A. Licari, Jr., Esq.
5/31	HARRIS: Motion to Stay the Proceeding, to Strike the Jury Panel and for a Supplemental Order Concerning the Selection of Prospective Petit Jurors, filed by defendant.
5/31	HARRIS: Application for Writ of Habeas Corpus Ad Testificandum (James Levey), filed by the Government and allowed. Newman, J. m-5/31/73. Two certified copies handed to U.S. Marshal at New Haven.
6/1	On JON Jury Assignment List. Marked ready. m-6/1/73.
6/4	CATRON: Hearing on Attorney Licari's Motion to Withdraw as Counsel for defendant. Motion granted, absent objection. Newman, J. m-6/4/73
6/5	JURY TRIAL COMMENCES: Motion for Separate Trial of Carl Gray, filed and so ordered. Defendant's Submission of Voir Dire Questions, filed by defendant Harris. Defendant's Submission of Voir Dire Questions, filed by defendant Catron. 38 jurors present, having previously been sworn on Voir Dire. 12 jurors and 3 alternates impanelled and sworn. Panel excused until conclusion of trial in Criminal Nos. B-63 and 13,225. Newman, J. m-6/6/73.
6/8	Marshal's Return Showing Service, filed: Writ of Habeas Corpus Ad Testificandum (James Levey).
6/11	CATRON: Court Reporter's Notes of proceedings held on June 4, 1973 (Motion) filed. Gale, R.
6/21	CATRON: Government's Further Response to Pre-Trial Motions of Defendants Charles Harris and Ronald Oswald Catron.
6/25	CATRON: CJA Form 20 executed, approved by the Court (Newman, J.), and mailed to A.O. for payment.

(continued)

DATE	PROCEEDINGS
1973	
6/25/73	CATRON: CJA Form 20 approving sum of \$212.30 payable to Attorney Joseph Licari, Jr., filed. Newman, J. Copies distributed.
6/25	Marshal's Return: Showing Service, filed: SUBPOENA to Testify (4).
6/25	Marshal's Return Showing Service, filed: Subpoena to Produce (1).
6/28	Marshal's Return Showing Service, filed. Subpoena to Produce (1).
7/2	Motion Calendar: By agreement of court and counsel, the jury impanelled in this case is dismissed. This case to be set down as the first case to be tried in September. Newman, J. m-7/2/73.
7/3	Marshal's Return Showing Service, filed: Subpoena Ticket (4), Subpoena to testify (1), Subpoena to Produce (1).
7/27	GRAY: Court Reporter's Transcript of proceedings held on January 2, 1973 (Plea), filed. Brown, R.
7/27	HARRIS: Court Reporter's Transcript of proceedings held on January 2, 1973 (Plea), filed. Brown, R.
8/23	HARRIS: Motion to Suppress, filed by defendant.
8/23	HARRIS: Motion to Suppress Identification Testimony, filed by defendant.
9/4	HARRIS: Defendant's Motion to Suppress Identification and Motion to Suppress Any and All Confessions and for Evidentiary Hearing, marked over to time of trial. Newman, J. m-9/4/73.
9/5	Capias issued and together with copy of same and of motion for issuance of capias for Earl Harris handed to U.S. Marshal in New Haven for service. m-9/6/73.
9/10	Marshal's Return Showing Service, filed: Subpoena to Testify (8); Subpoena to Produce (1).
9/12	Marshal's Return Showing Service, filed: Subpoena to Testify (3); Subpoena to Produce (1). Marshal's Return showing non est, filed: Subpoena to Testify (2).
9/11	Court Reporter's Notes of proceedings held on Sept. 4, 1973, filed. Gale, R.
9/14	Marshal's Return Showing Service, filed: Subpoena to Produce (4).
10/10	CATRON: Motion for a Speedy Trial, filed by defendant.
10/10	CATRON: Motion to Dismiss Indictment, filed by defendant.
10/17	HARRIS: Motion to Adopt Motions of Co-Defendant, filed by defendant.
10/15	CATRON: Hearing on defendant's Motion to Dismiss Indictment - decision reserved. Reply to Motion to Dismiss, filed by the Government. Defendant's Motion for a Speedy Trial, granted. Trial to follow Civil #13,238. Newman, J. m-10/15/73.
10/15	CATRON: Following endorsement on defendant's Motion for a Speedy Trial: Motion granted, assigned as next trial after the trial already scheduled for Oct. 16. Newman, J. m-10/16/73. Copies mailed to counsel.
10/16	CATRON: Court Reporter's Notes of proceedings held on Oct. 15, 1973, filed. Gale, R.
10/24	C. HARRIS & CATRON: JURY TRIAL COMMENCES: 41 jurors respond to roll call and administered voir dire oath. 12 jurors and 2 alternates impanelled and sworn. Panel excused until 10/25/73 at 11:00 a.m. Motion to adopt motions of the co-defendant, filed by defendant Catron. Hearing held on pending suppression motions. 4 Government witnesses sworn and testified. Government Exhibits 1-A thru 1-H, 2-A thru 2-F, 3, 4 and 5 marked for identification. Government Exhibits 3, 4 and 5 made full exhibits. 5:40 p.m. Court adjourned to 10/25/73 at 11:30 a.m. for continued argument

(Over)

DATE	PROCEEDINGS
1973	on suppression of identification. Jury panel called off until 2:00 p. on 10/25/73. Newman, J. m-10/25/73
10/25	C. HARRIS & CATRON: Marshal's Return Showing Service, filed: Subpoenas to Testify (8). Subpoenas to Produce (2).
10/25	HARRIS & CATRON: JURY TRIAL CONTINUES: Continued hearing on Suppression Motions. Further Reply to Motion to Dismiss Indictment, filed by the Government. 4 Government witnesses sworn and testified. Government Exhibits 6-A thru 6-J, marked for identification. Jury enters courtroom. 12 jurors and 2 alternates present. Defendant Catron's Motion to Sequester Witnesses, filed. Court grants motion to sequester all witnesses. By agreement of counsel, the agent in charge may sit at Government's counsel table. Court Exhibit 3501 marked for identification. 4 Government witnesses sworn and testified. Government Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10, filed. 4:50 p.m. Court adjourned to 10/26/73 at 10:30 a.m. Newman, J. m-10/26/73.
10/26	Marshal's Return showing service, filed: Subpoenas to Testify (5) Subpoenas to Produce (2).
10/26	C. HARRIS & CATRON: JURY TRIAL CONTINUES: 12 jurors and 2 alternates present. Government Exhibits 11, 12, 13, 14 and 15, filed. Government witness Daniel Buckley resumes stand for further testimony. Court Exhibits 3502, 3503, 3504, 3505, 3506, 3507 and 3508 marked for identification. In absence of jury Court discusses exhibit to be offered with Offer of Proof by counsel for defendant Catron. Defendant Exhibit A filed (Government Exhibit 6-B for identification in Suppression hearing). 12:35 - 2:00 p.m. jury recess. In absence of jury counsel conduct pre-trial hearing. Government Exhibits 7-A thru 7-L marked for identification. 3 Government witnesses sworn and testified. Out of hearing of jury, defendant Harris moves for mistrial - motion denied. 4:05 p.m. Court adjourned to 10/30/73 at 10:00 a.m. Newman, J. m-10/26/73.
10/30	Marshal's Return Showing Service, filed. Subpoenas to Testify (4)
	C. HARRIS & CATRON: JURY TRIAL CONTINUES: 12 jurors and 2 alternates present. Government witness Arthur Stanton resumes stand. Government Exhibits 16, 16-A thru 16-E, 17, 17-A, 17-B, 18, 19, 20, 21, 22 and 23 filed. 5 Government witnesses sworn and testified. Court Exhibits 3509, 3510 and 3511 marked for identification. 1:50 p.m. jury excused to 11/1/73 at 10:00 a.m. Suppression Hearing Continued: 1 Government witness sworn and testified. Government witness John Townsend, previously sworn, resumes stand and testified. Government Exhibits 8, 9 and 10 marked for identification. Defendant Harris sworn and testified on his own behalf. 3:40 p.m. Court adjourned to 11/1/73 at 9:30 a.m. Newman, J. m-10/31/73.
11/1	C. HARRIS & CATRON: JURY TRIAL CONTINUES: Court informs counsel two jurors are ill and the alternatives which may be taken. Counsel consult with defendants and reach decision. 10:05 a.m. jury enters courtroom, 11 jurors and 1 alternate present. 10:10 a.m. jury excused to 11/6/72 at 10:00 a.m. Suppression Hearing Continued: Defendant Harris resumes stand for further testimony. Defendant Harris rests at 10:40 a.m. Arguments: Defendant Harris 10:40 - 11:20 a.m. Government 11:20 - 11:35 a.m. Court has Government Ex. 10. Decision reversed on motion. 11:35 a.m. Court adjourned to 11/6/73 at 10:00 a.m. Newman, J. m-11/1/73.
11/5	Marshal's Return showing service, filed: Subpoena to Produce (1).
11/7	CATRON: Following endorsement on defendant's Motion to Dismiss Indictment. Motion denied for reasons stated this date in open

(cont'

PROCEEDINGS

11/3 Court, Newman, J. m-11/7/73. Copies mailed to counsel.

11/6 C. HARRIS & CATRON: JURY TRIAL CONTINUES: In absence of jury, Court rules orally on all pending motions to suppress. All motions denied for reasons stated in open Court. 12 jurors and 2 alternates present. 4 Government witnesses sworn and testified. Government Exhibits 24, 25 and 26, filed. Court Exhibits 3512, 3513, 3514 and 3515, marked for identification. 5:10 p.m. Court adjourned to 11/7/73 at 10:00 a.m. Newman, J. m-11/7/73.

11/7 C. HARRIS & CATRON: JURY TRIAL CONTINUES: In absence of jury, defendant Catron moves to strike testimony of witness Edna Jones. Motion denied. Pending motions by defendants to dismiss for failure to comply with six month rule re speedy trial are denied. 12 jurors and 2 alternates present. Witness Edna Jones resumes stand for continued cross-examination. Court Exhibit 3516 marked for identification. 3 Government witnesses sworn and testified. Government Exhibit 27, filed. 12:50 p.m. Government rests. Jury excused to 2:00 p.m. Defendant Harris' oral motion for judgment of acquittal, denied. Defendant Catron moves for judgment of acquittal, written motion filed. Motion denied. 2 defendant Catron witnesses sworn and testified. Defendant Catron Exhibit B marked for identification. Defendant Catron Exhibit B-1 filed. 3:50 p.m., in absence of jury, Government moves for production under Rule 16, motion denied. 3:55 p.m. jury returns to courtroom. Defendant Harris calls Odell Cohens, previously sworn, as his witness for further testimony. Defendant Harris sworn and testifies on his own behalf. 4:55 p.m. Court adjourned to 11/8/73 at 10:00 a.m. Newman, J. m-11/8/73.

11/8 Marshal's Return showing service, filed: Subpoena to testify(1) Subpoena to Produce (1).

11/8 C. HARRIS & CATRON: JURY TRIAL CONTINUES: Partial Transcript of C. Harris on October 30 and November 1, filed. (Cale, R.). Defendant Harris renews motion to suppress - denied. 10:30 a.m. jury enters courtroom. 12 jurors and 2 alternates present. Defendant Harris resumes stand for further testimony. 2 defendant Catron witnesses sworn and testified. Defendant Exhibit C, marked for identification; made full exhibit. Defendant Catron sworn and testifies on own behalf. 5:05 p.m. Court adjourned to 11/13/73 at 10:00 a.m. Newman, J. m-11/9/73.

11/13 Marshal's Return showing service, filed. Subpoena to testify(1). C. HARRIS & CATRON: JURY TRIAL CONTINUES: In absence of jury, Court and counsel for Government and defendant Catron stipulate on exhibit to be brought in with offer of proof by counsel for both sides. 10:15 a.m. jury enters courtroom. 12 jurors and 2 alternates present. Defendant Catron resumes stand for further testimony. Defendant Exhibit D, filed. Court Exhibits 3517 and 3518 marked for identification. 5 defendant Catron witnesses sworn and testified. Defendant Catron rests at 4:05 p.m. 1 defendant Harris witness sworn and testified. Defendant Exhibit E marked for identification. Defendant Harris recalled to stand for further testimony. Defendant Exhibit E made full exhibit. Government rebuttal witness against defendant Catron sworn and testified. 4:50 p.m. jury excused to 11/14/73. Government argues on admissibility of defendant Exhibit D as to both defendants. Court allows Exhibit D as to both defendants. Requests to Charge to be filed tomorrow

(over)

DATE 1973	PROCEEDINGS
	morning. Counsel make some oral requests at this time. 5:28 p.m. Court adjourned to 11/14/73 at 10:00 a.m. Newman, J. m-11/14/73.
11/14	Marshal's Return showing service, filed: Subpoena to Produce (1); Subpoena to Testify (1).
11/14	C. HARRIS & CATRON: JURY TRIAL CONTINUES: Defendants Requests to Charge, filed. 12 jurors and 2 alternates present. 1 defendant Harris witness sworn and testified. 10:15 a.m. defendant Harris rests. 3 Government rebuttal witnesses sworn and testified, Government Exhibit 28 and 29, filed. Court Exhibits 3512 and 3520, marked for identification. Government Exhibit 29 admitted as full exhibit. 10:58 a.m. Government rests in rebuttal. 11:00 a.m. jury recess. Defendant Harris oral motion for judgment of acquittal and motion to suppress - denied. Defendant Catron oral motion for judgment of acquittal - denied. Court advises counsel of proposed rulings on requests to charge. 11:15 a.m. jury returns to courtroom. Summations: Government opens 11:18 a.m. - 12:14 p.m. Defendant Harris 1:40 - 2:02 p.m. Defendant Catron 2:03 - 2:31 p.m. Government closes 2:31 - 2:41 p.m. Court rules on requests to charge. Counsel agree on retyped Indictment that will go to the jury and also forms of verdicts. Courts Charge: 3:08 - 3:59 p.m. Alternate jurors excused by Court. Jury excused to jury room. No exceptions taken to charge by either side. Counsel agree on all full exhibits to be taken to jury room by Marshal. 4:06 jury starts to deliberate. 5:25 p.m. jury returns to courtroom. Court instructs jurors they are to return at 10:00 ^{am} 11/15/73 and continue to deliberate when all 12 are present. Court adjourned to 11/15/73 at 10:00 a.m. Newman, J. m-11/15/73.
11/15	C. HARRIS & CATRON: JURY TRIAL CONTINUES: 12 jurors report to jury room. Exhibits delivered to jury by Clerk and they continue deliberating. 3:00 p.m. jury sends note re testimony of witness Buckley (Court Ex. #1). 3:05 p.m. jury enters courtroom and full testimony of witness Buckley read. Jury returns to jury room and continues deliberating. 4:15 p.m. second note from jury (Court Ex. #2) 5:38 p.m. jury brought into courtroom. 5:44 p.m. jury retires to jury room to decide what time they want to go home or stay until they reach verdict. 6:05 p.m. jury note stating they want to go home (Court Ex. #3) and continue deliberations tomorrow. 6:10 p.m. jury reports to courtroom and excused until tomorrow. 6:15 p.m. Court adjourned to 11/16/73 at 10:00 a.m. Newman, J. m-11/16/73.
11/16	C. HARRIS & CATRON: JURY TRIAL CONTINUES: 12 jurors report to jury room and exhibits delivered by U.S. Marshal and they continue deliberating. Fourth note (Court Ex. #4) from jury requesting further testimony read. 11:25 a.m. jury enters courtroom and reporter reads testimony of witnesses Davies and Perry. 11:50 a.m. jury retires to continue deliberating. 1:50 p.m. jury sends note that they have reached a verdict (Court Ex. #5). 2:05 p.m. jury returns with verdicts in writing of guilty on all three counts of the Indictment against both defendants. Jury polled at request of defense and all respond in the affirmative. Court accepts verdicts. Jury excused. Government moves to revoke personal recognizance bond of defendant Harris. Motion granted, personal recognizance bond of defendant Charles Harris is revoked and defendant is remanded to custody of U.S. Marshal. Defendant Charles Harris' motion to have a new bond set denied, without prejudice. Government moves to revoke personal recognizance bond of defendant Catron. Motion denied and Defendant Catron released on same bond until time of sentencing. 2:35 p.m. Court adjourned. Newman, J. 11/

(continued)

DATE 1973	PROCEEDINGS
11/19	C. HARRIS & CATRON: Court Reporter's Notes of proceedings held on Oct. 24 (Pick Jury), Oct. 24, Oct. 25, Oct. 26, Oct. 30, Nov. 1, Nov. 6, Nov. 7, Nov. 8, Nov. 14, Nov. 13, Nov. 15 and Nov. 16, 1973, filed. Gale, R. (12 pads).
11/26	CATRON: Motion for New Trial, filed by defendant.
11/26	CATRON: Motion for Judgment of Acquittal, filed by defendant.
11/29	C. HARRIS: Pre-Sentencing Instructions and Forms mailed to Atty. Clifford.
11/29	CATRON: Pre-Sentencing Instructions and Forms mailed to Atty. Cr.
11/30	E. HARRIS: Motion for Bench Warrant to be issued for arrest of defendant, filed by the Government.
12/3	CATRON: Hearing on defendant's Motion for Judgment of Acquittal. Motion denied and so endorsed. Newman, J. m-12/3/73. Copies mailed to counsel.
12/3	CATRON: Defendant's Motion for New Trial, marked over to 12/17/73. Newman, J. m-12/3/73.
12/3	E. HARRIS: Government's Motion for Bench Warrant for arrest of defendant ordered granted. Newman, J. Bench Warrant issued in duplicate and together with certified copy of Indictment and Motion and Order for Bench Warrant handed U.S. Marshal at New Haven for service. Copy of Order mailed to counsel.
12/4	CATRON & E. HARRIS: Court Reporter's Notes of proceedings held on Dec. 3, 1973, filed. Gale, R.
12/4	C. HARRIS: CJA Form 21 approving sum of \$31.00 payable to Court Reporter Gerald Gale, filed. Newman, J. Copies distributed.
12/13	C. HARRIS: Motion to Set Bail After Conviction, filed by defendant.
12/17	CATRON: Defendant's Motion for New Trial, marked over to time of sentencing. Newman, J. m-12/17/73
12/17	C. HARRIS: Defendant's Motion to Set Bail After Conviction, marked over to 12/18/73. Newman, J. m-12/17/73.
12/18	C. HARRIS: Hearing on defendant's Motion to Set Bail After Conviction, put over to 12/20/73 at 10:00 a.m. Newman, J. m-12/18/73.
12/21	C. HARRIS: Hearing held on defendant's Motion to Set Bail After Conviction. 1 defendant witness sworn and testified. Motion denied and so endorsed. Newman, J. m-12/21/73. Copies mailed to counsel.
12/21	C. HARRIS: Court Reporter's Notes of proceedings held on Dec. 21 1973 (Motion), filed. Gale, R.
1974	
2/6	CATRON: DISPOSITION: Oral argument on defendant's pending motion for new trial. Motion denied. Defendant committed to custody of Attorney General or his authorized representative for imprisonment for period of 5 years as a general sentence on all three counts. Defendant's oral motion to set new bond on appeal - Court sets bond at \$25,000.00, with surety. Court will permit appeal in forma pauperis when proper motion is submitted. Newman, J. m-2/6/74.
2/6	C. HARRIS: DISPOSITION: Defendant committed to custody of Attorney General or his authorized representative for imprisonment for a period of 5 years as a general sentence on all three counts. Defendant's oral motion to set new bond on appeal - Court sets bond at \$25,000.00, with surety. Court will permit appeal in forma pauperis when proper motion is submitted. Newman, J. m-2/6/74.
2/7	CATRON: Judgment and Commitment, filed and entered. Newman, J. m-2/7/74. Certified copies handed U.S. Marshal for service.

(over)

1
2 THE COURT: Mr. Clifford's motion to suppress
3 the statements made by Mr. Harris, I guess three statements,
4 in fact, the telephone conversation the night of November 15,
5 1972, the statement to Detective Cohens on the morning of
6 November 16, and the oral and signed statement given to Agent
7 Townsend on the morning of November 16. I will state my
8 findings and reasons on the record at this time.

9 I will deny all motions for suppression. I
10 find that Detective Cohens, as he testified, made inquiry to
11 defendant Harris' family indicating that he wanted to talk to
12 Harris, that that message apparently was relayed by family
13 members to the defendant, and resulted in the defendant initiating
14 a call to Detective Cohens. The circumstances of that phone
15 call were not such as to require any Miranda warnings, it was
16 not custodial interrogation or were there any circumstances
17 surrounding it that were the equivalent of custodial interroga-
18 tion.

19 The following morning the defendant appeared,
20 as he had agreed to, was arrested by Detective Cohens. I
21 credit Detective Cohens' testimony that he gave Miranda
22 warnings. Whether or not he gave it three times is a matter
23 for some speculation, but I am satisfied that he gave the Miranda
24 warning before he received any incriminating statement from
25 defendant Harris.

app. 13

SANDERS, GALE & RUSSELL
CERTIFIED STENOGRAPHIC REPORTERS

1
2 After the arrest by the state officer, the
3 defendant was again arrested by Federal Agent Townsend and
4 given full Miranda warnings, and I do not find that the
5 circumstances of the questioning by Agent Townsend impaired the
6 voluntariness of what the defendant did. Questioning was not
7 coercive, the circumstances were not hostile. From all that
8 appears, the defendant was anxious to turn himself in and, in
9 effect, to make a clean breast of it, and he did so and he was
10 thereafter properly presented to a commissioner.

11 Now, the legal issues that defendant raises
12 concerns the authority of the station official, Detective
13 Cohens, to make the arrest on the morning of the 16th. I think
14 there are several bases on which he could make that arrest.
15 First, as to the facts known to him, he knew there was a
16 federal warrant outstanding, and I find that that warrant was
17 adequately supported by probable cause in that a witness
18 who was named had identified defendant Harris from a bank
19 surveillance photograph. While that identification is a matter
20 that an ultimate fact finder on the issue of guilt might not
21 be persuaded beyond a reasonable doubt, it certainly is sufficient
22 to provide probable cause to believe that he is the person in
23 the bank.

24 So the federal warrant, as such, was supported
25 by probable cause. Detective Cohens knew there was a federal

app. 14

SANDERS, GALE & RUSSELL
CERTIFIED STENOGRAPHIC REPORTERS

1
2 warrant. In addition, he knew two other things prior to his
3 arrest. He knew there was a federal bank robbery. He also
4 knew that on the night of the 15th before he made the arrest,
5 that defendant Harris had said to him, using words which
6 Detective could fairly understand, referred to Harris and others,
7 he used words that said, "That was a stupid thing we did."

8 Now, I realize there is a dispute that the
9 defendant raises as to whether his words were, "It was a
10 stupid thing we did," or, "It was a stupid thing they did," and
11 in testimony Detective Cohens used both pronouns.

12 I am satisfied that what the Detective is
13 endeavoring to convey is his understanding that Harris had
14 said, "It was a stupid thing that we did." I think the problem
15 in grammar is best illustrated if you think of what the
16 situation would have been if only one person were involved.
17 If he was quoting Harris and said Harris said that was a
18 stupid thing he had done, there would be no doubt that he was
19 referring to Harris, but the fact that he didn't put himself
20 in the first person and said Harris said -- and didn't say
21 Harris said, "That was a stupid thing I did," would not change
22 the situation. The situation was a little more doubt
23 because it's the plural when he says Harris says that's a
24 stupid thing they did. That's subject to an interpretation that
25 Harris was referring to others, but I don't think Cohens

app. 15

SANDERS, GALE & RUSSELL
CERTIFIED STENOGRAPHIC REPORTERS

750 MAIN STREET
HARTFORD, CONNECTICUT

205 CHURCH STREET
NEW HAVEN, CONNECTICUT

1
2 understood him that way, so I am satisfied that Cohens had
3 heard a remark from the defendant which conveyed to Cohens the
4 view that Harris and others committed this bank robbery and
5 that gave Cohens probable cause to believe that Harris had
6 robbed the bank.

7 At that point, Cohens was entitled to arrest
8 Harris. Now, the legal basis for that arrest can stand on
9 different grounds. First of all, I see no reason why a state
10 officer cannot -- who has probable cause to believe that a federal
11 felony has been committed cannot arrest a person for that
12 felony. In United States against Deray, the Supreme Court
13 considered the lawfulness of a state officer's actions in
14 arresting a defendant for a federal violation. They
15 referred themselves to New York law pursuant to Title 18, Section
16 30-41, at least for the proposition that the validity of that
17 arrest turns on state law. It may be they also understood that
18 statute to convey some arresting authority on state officials,
19 although I concede that proposition is not entirely clear,
20 but at a minimum, they viewed the statute as a congressional
21 statement that there is no federal law of arrest and validity
22 is to turn on state law, at least in these circumstances, and
23 the court then went on to decide -- first, to look to state law
24 to see that, in fact, the law of New York is that an officer can
25 make an arrest on probable cause, and then went on to see whether

app. 16

SANDERS, GALE & RUSSELL
CERTIFIED STENOGRAPHIC REPORTERS

there was probable cause, in fact, and concluded there was not.

By the same analysis in this case, since there is probable cause in fact, there is nothing to prove to undermine the validity of the state officer's arrest.

Connecticut recognizes that in its statute, 6-49 of the Connecticut General Statutes, that an officer can make an arrest without warrant if he has reasonable grounds to believe the defendant has committed a felony, and this officer had probable cause. The existence of a federal warrant and the fact that it was supported by probable cause is probably sufficient alone, and for that, I would rely on State Cobuzzi, 161 Conn. 371/^{and} State against DelGado, 161 Conn. 536, and the fact that the probable cause to support the federal warrant was known to the federal officer does not disqualify a state officer from relying on that probable cause. I will rely on Wikely against Warden, 401 U.S. 60. The fact that the state officer may not have intellectualized himself the process by which he was exercising lawful authority is not disqualification.

In this District, U.S. against Ruggs, 192 F. Supplement 183, makes it clear that the legal conclusion in the mind of the officer is not determinative, the only question is whether he knows facts which justify his making a valid arrest.

It may also be that the state officer was entitled

app. 17

SANDERS, GALE & RUSSELL
CERTIFIED STENOGRAPHIC REPORTERS

1
2 to make an arrest for violation of state laws since the
3 robbery of this bank was clearly a state violation.

4 Defendant does raise an objection to that in that
5 the state arrest process was not carried through to completion
6 in that there was not a presentment before a state magistrate,
7 but there was a timely presentment before a federal committing
8 magistrate, and again, under U.S. against Russian, I think
9 that circumstance avoids any illegality if an arrest is viewed
10 as an enforcement of state law. Certainly, the remark made
11 to Detective Cohens the morning of the 16th was not the
12 product of any failure to bring the defendant to a state
13 committing magistrate, and furthermore, the prompt presentment
14 to the federal magistrate served fully the purposes of the
15 state presentment requirement.

16 So, in summary, the state officer could arrest
17 without a warrant because he had probable cause to believe a
18 federal felony had been committed. It may be under SECTION
19 30-41 that his authority extended to actually executing the
20 federal warrant, and it may also be that he had authority as a
21 matter of state law to arrest without a warrant for probable
22 cause to believe that a state felony had been committed. So for
23 all of those reasons, I am satisfied the arrest by Detective
24 Cohens was valid, that there is no basis for excluding the
25 oral statement of defendant Harris on the morning of the 16th

app. 18

SANDERS, GALE & RUSSELL
CERTIFIED STENOGRAPHIC REPORTERS

1
2 to Detective Cohens.

3 I should also point out that the statement made to
4 Detective Cohens on the morning of the 16th has added nothing
5 incriminatory beyond what was said to him the night of the 15th.
6 In fact, it was the same remark. And as I have indicated, the
7 subsequent events of the arrest of Detective Townsend, his
8 Miranda warning, his questioning were in all respects in
9 compliance with federal requirements, so for those reasons, the
10 motion to suppress each of the challenged statements is denied.

11 MR. CLIFFORD: May I be heard briefly, just perhaps
12 for the record more than anything else? My understanding of
13 U.S. versus Deray, is that involved an arrest by a price
14 administration officer during the Second World War, as I recall.
15 It also involved the arrest of an on-site violation. My
16 recollection of the facts was that the officer saw in plain
17 view the counterfeit war ration coupons in the hand of one
18 of the occupants of the car, and an arrest was made for that. My
19 recollection also is that the government specifically withdrew
20 from the appeal in question -- withdrew from the appeal their
21 previous position that a state officer has authority to arrest
22 pursuant to a federal warrant. That's my recollection of the
23 reading of U.S. versus Deray, so that insofar as that was an
24 on-site violation, I think that that case is distinguishable.

25 As I pointed out to the Court before, I do not

app. 19

SANDERS, GALE & RUSSELL
CERTIFIED STENOGRAPHIC REPORTERS

1
2 think that the police officer has to stand with his hands in his
3 pocket as a bank is being robbed, even though that could be
4 technically a federal offense. I think those facts are
5 distinguishable on the Deray and the present case. I thought I
6 would state that. That's my understanding.

7 THE COURT: The government did change their position
8 in the appeal, but I don't think it was in quite that respect.
9 They chose only to rely on part of the New York statute in
10 justifying arrest and not all of it, but they did retain as an
11 argument to the Supreme Court position that under New York
12 law a state officer could arrest without a warrant for probable
13 cause and the offense that they sought to persuade the
14 Supreme Court he had probable cause for was a federal offense.
15 The Court seemed to accept that premise, and at that point
16 made the somewhat oblique citation to Section 30-41, and then
17 went on to determine whether he did have probable cause. They
18 rejected the argument that he had seen a violation in his presence,
19 but that didn't end the case. They then went on to decide
20 did he, in fact, have probable cause to believe a violation of
21 federal law could hurt. On the facts there they said he
22 didn't. But it seems to me they uphold the principles that
23 if he has probable cause, and if state law permits him to make
24 an arrest without warrant on probable cause, then the fact that
25 it's a federal violation doesn't in any way disqualify the state

app. 20

SANDERS, GALE & RUSSELL
CERTIFIED STENOGRAPHIC REPORTERS

(In the absence of the jury.)

MR. CLIFFORD: Your Honor, in view of Mr. Cohens' testimony yesterday, I realize perhaps this is a little late in the ballgame, but in view of his testimony, I feel obliged to renew the motion to suppress in whatever way Mr. Cohens' previous testimony was credited by your Honor. I think it's fairly clear, your Honor, that Mr. Cohens has admitted to the jury that at one time, four years ago, he did sign false affidavit pursuant to a search warrant. That statement was previously denied by him on the stand when I first had him on cross examination. I would suggest that that incident under all those circumstances was not something that a police officer would forget, that on Tuesday, or whatever day it was, when he denied my previous questions, he denied that nothing it to be false.

What I'm suggesting, your Honor, is that in view of that attack on his credibility and his admitted -- I call the word perjury -- in whatever way your Honor considered his credibility, and most particularly to the Miranda warnings, which I have previously termed incredulous, insofar as that had an effect on your Honor's determination of my motion to suppress, I think it should be reconsidered. Your Honor should be aware that I was not cognizant of Mr. Cohens' situation concerning the previous affidavits until I was standing right

app. 21

SANDERS, GALE & RUSSELL
CERTIFIED STENOGRAPHIC REPORTERS

750 MAIN STREET
HARTFORD, CONNECTICUT

905 CHURCH STREET
NEW HAVEN, CONNECTICUT

1
2 here cross examining him and placed those two questions, and that
3 was only the basis that I recall, as I was standing here,
4 previous difficulty with Mr. Cohens involving our office,
5 and, to whatever extent his credibility had a part in your
6 fact finding or whether or not Miranda warnings were issued under
7 the circumstances three times in the court of 22 minutes, I would
8 now move that be reconsidered because I do think that then
9 changes the situation.

10 If your Honor finds that -- in fact, that Mr.
11 Cohens is not credited, that, in fact, the Miranda warnings
12 were not issued, and I take the circumstances are three
13 times in the course of 22 minutes under no occasions
14 was a written waiver ever executed, and most particularly the
15 circumstances where it was testified that it was administered
16 while in the police station itself, I think in all that
17 conjunction, your Honor, I think perhaps the Court ought to
18 reconsider its previous determination.

19 The other thing, your Honor, that I -- that's
20 a matter of scheduling. Mr. Gray and I are trying to
21 coordinate as best we can. Mr. Gray and I think -- are agreeable
22 that if necessary, he will proceed if I am waiting for a
23 witness which will in no way impede his case. If I have a
24 witness coming on it's not one that would necessary go before
25 Mr. Gray. It would deal solely with Mr. Harris. I foresee

1
2 one situation like that right now this morning. It will not
3 delay the course of the trial, but it may mean that we are going
4 to have to accommodate between ourselves as to the order
5 of witnesses.

6 THE COURT: That's all right. As far as you're renewed
7 motion to suppress, to the extent you have, in effect, supplemented
8 your attack on Detective Cohens' credibility, there is no
9 question you provided a significant attack on his credibility.
10 At the same time, there is a basis for disbelieving defendant
11 Harris' denial about the warrant -- the warning, so unlike
12 perhaps the usual Miranda swearing contest that occurs where all
13 there is is the officer saying, "I warned him," and the
14 defendant saying, "He didn't," there is in this case your
15 evidence that on a prior occasion the officer was certainly
16 not complete with the court. Whether he meant to -- whether
17 there was what would really be a perjury in connection
18 with the affidavit situation, I'm not entirely clear on, because
19 what were really the circumstances that gave rise to the two
20 affidavits is not entirely clear. It may never become clear.
21 There was some suggestion, I think, in your questioning that
22 the affidavit had been signed at the request of the superior
23 officer. That, of course, would not in any way excuse the
24 witness' failure to testify truthfully in this proceeding that it
25 happened, even though there may have been that mitigating

1
2 circumstances as to why it happened. It wouldn't necessary
3 excuse it, but it would at least, in the context of a police
4 command situation, give some explanation for it, but I understand
5 your attack is that it's the kind of incident that he is unlikely
6 to have forgotten, and his failure to disclose it in this
7 proceeding is certainly a ground for impeachment.

8 Now, with respect to Harris' statement that it
9 didn't happen, namely: the Miranda warning, there is his
10 other testimony concerning the circumstances under which he wrote
11 the word "in correct", which I previously found is not
12 credible, and having concluded that, I am left with questions
13 about the credibility of each.

14 Now, I appreciate that the lines of attack are
15 not of the same type, but credibility questions never are.
16 They don't come neatly packaged with numerical values on them so
17 you can be certain to a certain level if one man is telling the
18 truth and another man is not, and, of course, neither grounds of
19 impeachment goes precisely to the issue of was the Miranda
20 warning given. These are other aspects of testimony where there
21 is a basis for disbelieving what each said.

22 Now, I realize, in addition to that, you're
23 concerned about the absence of a waiver form.

24 MR. CLIFFORD: Yes, sir.

25 THE COURT: Which does bear, as you see it, on the

credibility of whether the Miranda warning was given. I don't see that as a basis for disbelieving the Miranda warning, because I think it's entirely reasonable where a city police officer goes out to make an arrest, in circumstances like these where -- we don't have all backgrounds as to why he was selected, I think the reasonable conclusion is that there was some prior acquaintanceship certainly with family members, and apparently with the defendant, and I am led to that conclusion because even the defendant refers to him as Odell, and given the, shall I say -- the inevitable hostilities that often exist with respect to police officers, I think it's of significant -- it's of significance when a defendant refers to a police officer by his first name, and not in any derisive fashion, but it seems to me it evidences some easy familiarity with a person.

When that type of police officer is sent out, it's not his case, it's not his department's case, and Detective Cohens testified that he didn't regard it as his case, and that he obtained signed waivers in New Haven Police Department cases and not FBI cases. That may not be a laudible practice, but I think it's an understandable one. I don't conclude from the absence of the signed waiver that it was not given.

In short, there are various factors that cut one way or another. That type of resolution in testimony is never easy, nor can a conclusion ever be reached with absolute

1
2 confidence, but some conclusion must be reached about it, and
3 I am satisfied on all the evidence, everything I have heard,
4 both at the suppression hearing and everything I heard yesterday,
5 both from Mr. Cohens and Mr. Harris, that the finding that
6 a Miranda warnings was given initially bh Detective Cohens ought
7 not to be revised or set aside.

8 MR. CLIFFORD:: I think the record should be clear that
9 the thrust of my argument on Mr. Cohen's perjury, at least, his
10 previous perjury, is that was perjury committed in the course
11 of his official duties as a police officer, which is analogous
12 to his testimony concerning Miranda warnings. It is not perjury
13 outside of his official capacity, for instance, as in a divorce
14 proceeding or something like that. It is directly to the point --

15 THE COURT: I understand. That's the only reason I let
16 you explore it at all, because it doesn't come in as a conviction
17 for perjury or any conviction going to credibility. The only
18 reason I let it in at all is because it was, as you claimed it,
19 at least, a false statement not proven to be false, but a
20 statement where the circumstances indicate its falsity in a
21 context of performance of duties by law enforcement officials.
22 That's the reason I let you pursue it at all, so I'm not
23 unaware of its significance.

24 MR. CLIFFORD: I have renewed my motion.

25 THE COURT: There is one other matter that perhaps we

app. 26

SANDERS, GALE & RUSSELL
CERTIFIED STENOGRAPHIC REPORTERS

750 MAIN STREET
HARTFORD, CONNECTICUT

205 CHURCH STREET
NEW HAVEN, CONNECTICUT

1
2 should deal with. I see there is a transcript of defendant
3 Harris' testimony at the suppression hearing. I don't want to
4 anticipate added problems. There are enough issues in a
5 trial, but I simply want to alert counsel to my concern. If there
6 is to be questioning of defendant Harris on what he said at the
7 suppression hearing, I think we ought to deal with those claims
8 outside of the presence of the jury before any irreparable
9 activity occurs.

10 MR. CLIFFORD: If the government has a copy of that
11 transcript, I request that the defendant be provided a copy
12 of the transcript. That's number one.

13 Number two, your Honor. I would move that the
14 government not be allowed to cross examine on the basis of that
15 transcript, and I have not got the citation right to hand. I
16 am very much aware of Waller and Harris decision concerning
17 the use of suppressed confession for the purpose of impeachment
18 on collateral matters on the testimony of the defendant on the
19 stand. I'm aware of that, what I'm also aware of, your Honor,
20 is the recent case that came down, Jones versus the United
21 States, the question of standing --

22 THE COURT: Simmons.

23 MR. CLIFFORD: I forget the name of the case, offhand,
24 but it seemed to me that the holding there was that the defendant
25 has the right to establish his standing. In other words, if

Q Charles took part in the conversation?

A Just -- the only thing Charles said is, "It would be worth your while to let us use the car."

Q You were shown Defendants' Exhibit A. I believe you stated from that photograph you can recognize Earl Harris?

A Yes.

Q I show you Government Exhibit 8 and ask you to look at that photograph. Do you see anyone in that photograph you recognize?

MR. CLIFFORD: Objection to that, your Honor. He is limited to --

THE COURT: Perhaps you can deal with this one step at a time.

Q I would ask you to look at Government Exhibit 8.

A Yes.

Q Is that a photograph?

A Yes.

Q Do you see some people in that photograph?

A Yes.

Q Those people that you see in that photograph, do you recognize any of them?

A Yes.

Q How many of those people do you recognize?

A Two.

app. 28

SANDERS, GALE & RUSSELL
CERTIFIED STENOTYPE REPORTERS

750 MAIN STREET
HARTFORD, CONNECTICUT

205 CHURCH STREET
NEW HAVEN, CONNECTICUT

1
2 MR. CLIFFORD: Objection. The photograph speaks
3 for itself.

4 THE COURT: Up to a point it does. I think, Mr.
5 Maxwell, it's going to be more precise if you do
6 this one at a time.

7 Q Mr. Robinson, of the people that you recognize in that
8 photograph there, just point to the general area to me where you
9 recognize people, would you do that, just point on the
10 photograph --

11 THE COURT: I'm not sure that would help, because
12 they are all standing in the same area.

13 Q You said you recognize two people in that photograph?

14 A Yes --

15 MR. CLIFFORD: Objection to that.

16 THE COURT: That was the point of the objection.

17 MR. CLIFFORD: I move for a mistrial.

18 THE COURT: Mr. Maxwell, I tried to suggest to
19 you that you do it one at a time. It's not very
20 hard to do.

21 MR. CLIFFORD: May I approach the bench, please?

22 THE COURT: Well, I will hear you, but I don't know
23 that it needs to be taken up right at this juncture.

24 MR. CLIFFORD: I would like the record to indicate
25 that I would like something to be heard now or some

subsequent time.

5 THE COURT: Does it relate to a cautionary
6 instruction? I will instruct the jury, in any event,
7 that there is going to be further testimony on this
8 point, apparently, but I will instruct the jury to
9 disregard -- let me put it this way. Disregard all
10 of his testimony with respect to this photograph thus
11 far. I don't want to call your attention to any
12 particular answer. Disregard all of his testimony
13 with respect to this photograph. All right.

14 MR. CLIFFORD: A further instruction to disregard
15 the question that Mr. Maxwell has posed.

16 THE COURT: I hope the jury understands that
17 questions are never evidence. The only thing you are
18 interested in are the answers. To the extent that a
19 question suggests something to you whether asked
20 by anybody, that's not the evidence, the evidence
21 are the answers. So let's start again.

22 Q Mr. Robinson, that photograph that is in front of
23 you, Government Exhibit 8, are you able to identify any of the
24 people in that photograph?

25 MR. CLIFFORD: Objection.

THE COURT: Can you answer that yes or no,
whether you can identify anyone in that photograph?

app. 30

SANDERS, GALE & RUSSELL
CERTIFIED STENOGRAPHIC REPORTERS

THE WITNESS: Yes.

THE COURT: All right.

Q Which person can you identify?

MR. CLIFFORD: Objection.

THE COURT: Sustained.

MR. MAXWELL: May I go side bar?

(Conference at the bench.)

THE COURT: I don't know how the matter could be any clearer. The point of the objection, obviously, is that he doesn't want you to have this witness make an identification of his client when his client is sitting in the courtroom, and the jury is in just as good a position to make that comparison. What I was suggesting to you clearly, I thought, was that you could get at it without having a judgment by this witness about Mr. Clifford's client. If what you want is a judgment of Earl Harris who is not sitting in the courtroom, you can ask him about that. You can ask him can he recognize the first man --

MR. CLIFFORD: I want to be heard on my motion at a subsequent time. To pose that question without any basis in evidence at all and use the figure two, and there are only two people, and he has identified he knows both of these people for a lengthy period of

app. 31

SANDERS, GALE & RUSSELL
CERTIFIED STENOGRAPHIC REPORTERS

1
2 time, leaves the indelible impression in the mind
3 of the jury, and there was no basis in evidence to
4 assert the question to. It was leading, and I would
5 suggest it was leading for the very purpose of leaving
6 that impression with the jury, and I move for a
7 mistrial.

8 THE COURT: Well, I think it was an unfortunate
9 question. There are three faces in that picture. They
10 are not all distinct, but I will deny your motion as
11 of now. Certainly, if there is any evidence that
12 connects Charles Harris with this crime, the possible
13 inference that the jury got or might have gotten is
14 not going to matter, and conversely, there is other
15 evidence that may make it rather trivial. I can't assess
16 how it's going to stack up in the entire trial. So I
17 will deny your motion and I will hear you at a subsequent
18 time if the record as a whole makes this episode
19 seemingly prejudicial.

20 MR. CLIFFORD: The record should also indicate
21 that I have detected a pattern of leading questions
22 to the witness and that this question is a typical
23 example of leading question syndrome, and either we are
24 going to be up and down like yo-yos in front of the
25 jury, which places us in a terrible disadvantage, I

1
2 don't know how to phrase it, but I do not mind leading
3 questions to place the situation in focus, I do mind
4 on the nitty-gritty, and we are now on the
5 nitty-gritty, and I am very upset, your Honor.

6 THE COURT: It's a problem. It has come up several
7 times, and there have been objections and counsel
8 are on notice that if that line is overstepped on
9 critical matters, you do risk a mistrial.

10 (Conference at the bench concluded.)

11 Q Mr. Robinson, referring you to Government Exhibit 8
12 there, do you recognize Earl Harris in that photograph?

13 A Yes.

14 Q Would you indicate to the jury which individual is
15 Earl Harris?

16 A The first one.

17 Q Are you referring to an individual that appears to
18 have a dark colored hat on?

19 A Yes.

20 MR. MAXWELL: Nothing further from this witness.

21 RECROSS EXAMINATION

22 BY MR. GRAY:

23 Q Mr. Robinson, with reference to Government 8, it's now
24 your testimony that the individual in front with the beret type
25 hat and dark glasses is Earl Harris, is that correct?

1
2 A Yes.

3 Q This is a black and white photograph, is it not?

4 A Yes.

5 Q And the reference to Defendants' Exhibit A, previously
6 identified as Earl Harris, is that one and the same Earl Harris
7 that you know?

8 A Yes.

9 Q And whom you have known for several years, is that
10 correct?

11 A Yes.

12 Q Do you see him anywhere in this courtroom today?

13 A No.

14 Q It's your testimony that he is a Negro male of
15 light brown skin complexion, is that correct?

16 A Yes.

17 MR. GRAY: Thank you.

18 CROSS EXAMINATION

19 BY MR. CLIFFORD:

20 Q Mr. Robinson, just a few questions. On the redirect
21 by Mr. Maxwell; that is, when Mr. Maxwell questioned you the
22 second time today, you told him that the only conversation that
23 Earl was doing most of the talking, but that the only
24 conversation that you had with Charles was Charles said, it would
25 be worth your while, is that correct?

1
2 least all of the evidence in the case of Charles
3 Harris, as to whether or not the person who called in
4 was Charles Harris. The fact that it's admissible
5 doesn't mean that you are to automatically assume
6 that it was. That's a question for you to decide when
7 you have heard all the evidence that affects Charles
8 Harris' case.

9 Q Detective Cohens, I believe you indicated that the party
10 on the other end of the telephone indicated that he was Charles
11 Harris?

12 A Yes, sir, he did.

13 Q Would you relate the conversation that you had with
14 this person in that phone call on the evening of November 15,
15 1972?

16 A Yes, sir. After he had stated to me that he was
17 Charles Harris, I then stated to him that the FBI and another
18 police agency were looking for him. I wouldn't ask him where he
19 was because I just wanted to talk to him. I told him it would
20 be best for him if he came in and got this matter straightened
21 out, and his picture was on the TV, and also in papers, and he
22 also stated to me at that time that, "I know, it was a stupid
23 thing that we did."

24 I also asked him if he would consider surrendering
25 himself to me, and that I would meet him by myself and that I

app. 35

SANDERS, GALE & RUSSELL
CERTIFIED STENOGRAPHIC REPORTERS

1
2 wouldn't bring anybody else with me, just to assure him that he
3 wouldn't be harmed in any way.

4 Q Detective Cohens, you indicated that his picture was
5 in the paper and on TV.

6 MR. CLIFFORD: Objection to that. I move for a
7 mistrial. There has been no testimony by this
8 officer that there was any picture in the newspaper.

9 THE COURT: I recall something about a newspaper.
10 Are you questioning him about his last response,
11 this witness' last response?

12 MR. MAXWELL: His conversation with Charles Harris.

13 THE COURT: Perhaps it would be well to read it
14 back.

15 (Answer read.)

16 MR. CLIFFORD: My motion still stands.

17 THE COURT: I thought your concern was that the
18 question went beyond the answer.

19 MR. CLIFFORD: That's one concern. The other
20 concern is that this is a back door approach to
21 an evidentiary --

22 THE COURT: The reference to television?

23 MR. CLIFFORD: Yes, your Honor. If I can
24 approach the bench, I will make the offer of proof.

25 THE COURT: All right.

(Conference at the bench.)

MR. CLIFFORD: This witness has testified substantially different from the way he testified at the probable cause hearing, at the suppression hearing, that's number one.

THE COURT: In what respect?

MR. CLIFFORD: The whole conversation about the picture in the newspaper and the radio can lead to one conclusion that they are talking about the bank surveillance picture. At least in my mind, and what there --

THE COURT: Why does it lead to that? If they were looking for Charles Harris, just as logical they would have put out a picture of Charles Harris. In fact, more logical, because your point is he is not very identifiable from that photo.

MR. CLIFFORD: My concern is I see testimony coming in here that was never offered to this Court before in the suppression hearing, the content of that conversation. And I see that as an effort to get that bank surveillance photo in before this jury, even though they can't do it any other way. Maybe I'm oversensitive to the issue.

THE COURT: I don't know why they can do it any

app. 37

SANDERS, GALE & RUSSELL
CERTIFIED STENOGRAPHIC REPORTERS

1
2 way. I don't understand that argument. In any
3 event, this witness has not testified to it. He says
4 they are looking for you and your photo has been in
5 the paper. I think if the jury concludes anything
6 from that, they assume it's a readily identifiable
7 photo.

8 MR. CLIFFORD: Okay.

9 (Conference at the bench concluded.)

10 MR. MAXWELL: Read back the last question.

11 (Question read.)

12 Q That question can be answered by yes or no.

13 A Yes.

14 Q Detective Cohens, were you referring at that time to
15 something that you yourself had seen?

16 THE COURT: Just a minute. The point of the
17 objection raised a matter that has been raised before.
18 If counsel is in any doubt what I'm referring to,
19 we can come back to the bench and discuss it. In
20 effect, I have overruled the objection to the -- at
21 the point it was taken just now, but I have sustained
22 it with respect to the point previously raised as to
23 characterization.

24 MR. MAXWELL: I'm not intending on going into
25 characterization, that was something that this officer

had himself seen.

THE COURT: All right. The issue that defense counsel is properly objecting to has been made well known, so that any questioning has to be appropriately handled.

Q Detective Cohens, can you answer that question in a yes or no?

A What was the question again?

Q The conversation with Mr. Harris on the telephone that evening, and you indicated that a picture of him had appeared on television and in the newspaper?

A Yes, sir.

Q Was this a picture that you yourself had seen?

A Yes, sir, I had seen.

Q AT that time, did he indicate to you whether or not he was aware of that event occurring?

A Yes, sir, he said he knew.

Q Detective Cohens, I believe you indicated that he said, "It was a stupid thing we did"?

A Yes, sir.

Q Do you know what he was referring to by that?

MR. CLIFFORD: Object to that.

THE COURT: Sustained.

Q Detective Cohens, at the time that statement was made

app. 39

SANDERS, GALE & RUSSELL
CERTIFIED STENOTYPE REPORTERS

by Charles Harris, what were you discussing?

A I discussed with him that the FBI and the other police agency were looking for him in regards to the bank robbery.

Q Detective Cohens, I believe you indicated that part of the conversation concerned Charles Harris surrendering, is that fair to say?

A Yes, sir.

Q Would you relate that portion of the conversation?

A I stated to him that I thought it would be best for him if he came in and got this matter straightened out and that if he would be willing to surrender himself to me, that I come alone.

Q Did he make a reply to that?

A He stated that he would be willing to surrender himself and cooperate in every way he could, but that he didn't know what time he would be able to come into New Haven due to the fact that he didn't have a bus schedule.

Q What took place after that?

A He stated that he would call me back, and as soon as he found out what time the bus would be leaving from wherever he was.

Q Was that the end of that conversation?

A Yes, sir, it was.

Q Subsequent to that, did you receive another telephone

O D E L L C O H E N S, recalled as a witness,
having been previously duly sworn, resumed and testified
further as follows:

THE COURT: You have previously been sworn in
this case. You are still under oath.

THE WITNESS: Yes, sir.

DIRECT EXAMINATION

BY MR. CLIFFORD:

Q Mr. Cohens, you are here under a subpoena issued by me
on behalf of defendant Charles Harris, is that correct?

A Yes, sir, I am.

Q And, Mr. Cohens, you have testified previously in
this case, have you not?

A Yes, sir, I have.

Q Do you recall the two questions, which I shall now repeat,
which I placed to you at the end of my cross examination? The
first question that I placed to you, as best as I can recall, was,
one, had you ever filed or signed a false affidavit in
connection with the issuance of a search or arrest warrant, and
your answer to that, as I recall, was: no, never. Is that
your recollection?

A Something to that effect.

Q Then I asked you also a second question, had you
ever signed a false affidavit for the issuance of a search

1
2 or an arrest warrant pursuant to an order from a higher officer,
3 do you recall that question?

4 A No, sir, not offhand, no, sir.

5 Q My recollection to that was that your answer was: no.
6 But in any event, Mr. Cohens, in connection with either of those
7 two questions, assuming that the second question was positive
8 to you, do you want to change your answers in any respect?

9 A No, sir.

10 Q For the benefit of the jury, in connection with the
11 application for a search or arrest warrant, there is an
12 affidavit, isn't that correct?

13 A Yes, sir, there is.

14 Q And that affidavit is a fairly standard form
15 affidavit with large empty blocks to be filled in by the
16 officers, isn't that correct?

17 A Large empty blocks?

18 Q Let me -- question withdrawn.

19 The application, the affidavit for the issuance of
20 a search or arrest warrant, is a standard form, isn't that
21 correct?

22 A Yes, it's standard.

23 Q And that standard form starts off with the language,
24 "I, the undersigned, being duly sworn, complains on oath that the
25 undersigned has probable cause to believe that certain property

1
2 to wit:," it starts off that way, isn't that correct?

3 A Something to that effect.

4 Q It clearly indicates that the person applying
5 and signing the affidavit is under oath, isn't that correct?

6 A Yes, sir, I would say so.

7 Q And the procedure is that the officer will fill out the
8 affidavit and then take it to a judge, is that correct?

9 A Yes, sir.

10 Q And the judge then swears him in, isn't that correct?

11 A Yes, sir.

12 Q And the oath that you take at that time is the same
13 oath that you take when you go on the witness stand, isn't that
14 correct?

15 A Yes, sir.

16 Q Directing your attention to February 5, 1969, do you
17 recall a hearing in the Connecticut Circuit Court involving
18 the State of Connecticut versus Francis DePalma and the State
19 of Connecticut versus Anthony Mazziotti, do you recall that?

20 A No, sir, not that far back, no, sir.

21 Q To refresh your recollection, perhaps I should tell
22 you that the judge at that time was Judge Hennebry, and that
23 Howard Jacobs represented Mr. DePalma, and that David Goldman
24 represented Mazziotti, does that refresh your recollection in
25 any way?

app. 43

SANDERS, GALE & RUSSELL
CERTIFIED STENOGRAPHIC REPORTERS

1
2 A No, sir, I still don't remember.

3 Q So that we can get to the point quickly, and perhaps
4 this will refresh your recollection, the question presented in
5 that case involved two search warrants -- two affidavits for
6 search warrants signed by yourself and Detective --

7 MR. MAXWELL: I would object to Mr. Clifford's
8 methods of refreshing this witness' recollection.

9 I believe he has some transcript there. If he wishes
10 to refresh the witness' recollection, he should show
11 him the papers that he has and allow the witness to read
12 that instead of him reading him information.

13 MR. CLIFFORD: I am trying to frame the question
14 in such a way that at least he can get these facts
15 and to refresh his recollection rather than tediously
16 draw them out. If the Court prefers I go the other
17 way, I would be happy to.

18 THE COURT: There is a concern about keeping the
19 distinction between just refreshing his recollection
20 and developing evidence. I think it would be probably
21 well to maintain in that distinction.

22 Q Detective Cohens, did you sign an affidavit for the
23 search warrant for the premises and the person known as Francis
24 DePalma and premises at 188 East Street, New Haven, Connecticut,
25 do you recall that?

1]

Cohens - direct

1033

2 A I don't recall the case, Counsel.

3 Q You don't recall that at all?

4 A No, sir, I do not.

5 Q Well, let me show you the affidavits. Is that
6 affidavit signed by you?

7 A Yes.

8 Q And Detective Buffaloe?

9 A Above mine, yes.

10 Q That was an affidavit signed by you under oath,
11 is that correct?

12 A It would have to be, yes, sir.

13 Q More specifically, in connection with that affidavit,
14 there is a paragraph concerning itself with surveillance,
15 is there not?

16 A There should be, yes, sir.

17 Q Why don't you turn the page? I think it's on the
18 second page. Do you recall that now?

19 A I don't recall the case, no, sir.

20 Q The purpose of the surveillance paragraph, Mr. Cohens,
21 is so that the judge in issuing the warrant will know that
22 there is some corroboration being alleged by the people signing
23 the affidavit, isn't that true?

24 MR. MAXWELL: I will object to the question.

25 MR. CLIFFORD: If he knows the answer to that.

app. 45

SANDERS, GALE & RUSSELL
CERTIFIED STENOGRAPHIC REPORTERS

750 MAIN STREET
HARTFORD, CONNECTICUT

905 CHURCH STREET
NEW HAVEN, CONNECTICUT

THE COURT: Overruled.

A I would assume.

Q In that particular affidavit, you say the undersigned, meaning you and Detective Buffaloe, conducted a surveillance, isn't that correct?

A Correct.

Q And that surveillance was conducted on November 12 and November 13 between the hours of 10:00 and 12:00 p.m., isn't that correct?

A Yes.

Q It's at the premises known as 188 East Street, isn't that correct?

A Yes, sir.

Q And East Street is on the east side of New Haven, isn't that correct?

A Yes, it is.

Q Did you sign an affidavit for a search warrant concerning the premises of 551 Winthrop Avenue, do you recall that occurring at about the same time as that?

A No, sir, I don't.

Q You don't recall that?

A No.

Q Take a look at that, Mr. Cohens.

Do you recall that, Mr. Cohens?

A No, sir.

Q You don't recall this at all?

A Too far back, Counsel, I don't recall it.

Q Is that an affidavit signed by you?

A There is nothing at the bottom. It's just a small portion of it seems like my name at the tail end.

Q E-n-s, does that appear there?

A I can't decipher what it is, but the way I make my S's, is like that.

Q It's like that. Right above that you can make out the end of Buffalo?

A It looks like that, yes.

Q From what you can see, that appears to be at least that portion of your signature, is that correct?

A The tail end, yes.

Q Referring to that particular affidavit, there is also a surveillance paragraph in there, is there not?

A Yes, sir, there is.

Q That indicates that on November 13 at 10:45 a surveillance was undertaken at the premises known as 551 Winthrop Avenue, isn't that correct?

A Correct, yes, sir.

Q Winthrop Avenue is over at the westerly side of New Haven, isn't that correct?

app. 47

SANDERS, GALE & RUSSELL
CERTIFIED STENOGRAPHIC REPORTERS

1 A It would be on the west side, yes, it would be.

2 Q Mr. Cohens, between those two affidavits, it's clear,
3 is it not, that one affidavit says that on November 13, between
4 10 and 12 o'clock, a surveillance was undertaken at 188 East
5 Street by you and Officer Buffalo, and that on November 13, the
6 same day, a surveillance was undertaken at 10:45 at 551
7 Winthrop Street, isn't that correct?
8

9 A That's what the affidavits state.

10 Q Those are affidavits under oath, isn't that correct?

11 A Yes, they are.

12 Q Mr. Cohens, I want to read you a portion of a
13 transcript at the hearing in front of Judge Hennebry.

14 MR. MAXWELL: I would object.

15 THE COURT: Sustained.

16 Q Detective Cohens, it is clear, is it not, that on
17 one of those affidavits that you signed, you did not conduct
18 this surveillance, is that correct?

19 A I don't recall the case. You know, I can even speak
20 on it. I don't recall the case at all.

21 Q In that regard, I am reading you from the transcript
22 that says -- on Defendant's Exhibit 3, you say here that on
23 November --

24 THE COURT: Are you reading his response?

25 MR. CLIFFORD: I'm reading the question posed to

1
2 him.

3 THE COURT: To this witness?

4 MR. CLIFFORD: To the witness. The question
5 posed to this witness and his response.

6 THE COURT: Is the claim that what you now want
7 to confront him with is not true?

8 MR. CLIFFORD: The claim I want to confront him
9 with is true. In other words, in the transcript
10 what I'm saying is --

11 MR. MAXWELL: I think the jury should be excused
12 at this time if we are going to get into going back
13 and forth with this transcript. The witness has
14 already testified he doesn't recall.

15 THE COURT: That doesn't necessarily put an
16 end to the inquiry, and I don't think Counsel is making
17 his claim and is detailing the substance -- I am
18 trying to understand whether you are refreshing his
19 recollection or are you impeaching him?

20 MR. CLIFFORD: I am refreshing his recollection.

21 THE COURT: Then you can show it to him. That
22 isn't a matter of evidence.

23 Q Mr. Cohens, I draw your attention to Page 45, the last
24 line, that question. I am now referring to Page 66 down to the
25 middle of 67 where the pencil mark is.

app. 49

SANDERS, GALE & RUSSELL
CERTIFIED STENOGRAPHIC REPORTERS

750 MAIN STREET
HARTFORD, CONNECTICUT

805 CHURCH STREET
NEW HAVEN, CONNECTICUT

Now, Mr. Cohens, at that previous hearing you testified that you signed the affidavit for the search warrant of 551 Winthrop Avenue, isn't that correct?

A Yes, sir, from the transcript I did, yes, sir.

Q And you also testified at that prior hearing that although you swore under oath that you conducted the surveillance, in fact, you did not, isn't that correct?

A Yes, sir.

Q In fact, you did not know who conducted the surveillance, is that correct?

A From the transcript, that's what it states, yes.

Q That you signed the affidavit without having undertaken the surveillance because a supervising officer asked you to, is that correct?

A From the transcript, yes, sir.

Q Sergeant O'Connor?

A Yes, it was.

Q So that on that affidavit when you said, "I, the undersigned, duly sworn," and then you stated that on November 13, 1968, at 10:45 a.m., the undersigned Detectives conducted a surveillance, that wasn't true, was it?

A Would you repeat that again?

MR. CLIFFORD: Read that.

(Question read.)

app. 50

SANDERS, GALE & RUSSELL
CERTIFIED STENOGRAPHIC REPORTERS

750 MAIN STREET
HARTFORD, CONNECTICUT

905 CHURCH STREET
NEW HAVEN, CONNECTICUT

A That's the way I signed the affidavit, yes, sir.

Q It wasn't true?

A As far as the surveillance, I didn't know who conducted it.

Q When you swore that you did, you knew that wasn't true?

A I would say so, yes, sir.

Q And prior to signing that, you had taken an oath to tell the truth, had you not?

A That would be the necessary formality, yes.

Q That's the same oath that you have taken on this stand as a witness, isn't that true?

A That's right.

MR. CLIFFORD: No further questions.

CROSS EXAMINATION

BY MR. MAXWELL:

Q Mr. Cohens, at this time do you have any independent recollection of the matters that Mr. Clifford asked you about?

A No, sir, no more than to say it was an error on my part. I didn't recall it, and to this day, I can't recall the exact investigation myself. I would like to apologize to the Court, as far as that goes.

MR. MAXWELL: I have nothing further.

THE COURT: Detective Cohens, you are excused.

(Witness excused.)

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA
PLAINTIFF-APPELLEE

)

DOCKET NO. 74-1193

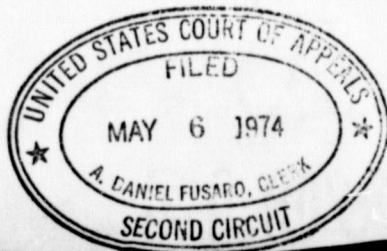
VS

RONALD CATRON
DEFENDANT-APPELLANT

BRIEF (ANDERS)
MOTION FOR PERMISSION TO WITHDRAW AS COUNSEL

The undersigned, having been appointed as counsel for Defendant Ronald Catron, hereby moves for permission to be allowed to withdraw as counsel for the following reasons:

1. That the undersigned was trial counsel for the Appellant at a jury trial presided over by the Honorable Jon O. Newman, United States District Judge, District of Connecticut.
2. That the transcript has been read and reviewed.
3. That Appellant's conviction was obtained through the testimony of witnesses at trial, there being no other evidence such as surveillance photographic identification, line-up identification, fingerprints, vocal recognition, bait-money or other extrinsic evidence that in any way connected Appellant Catron to the crimes charged.
4. That Appellant Catron, in addition to his own testimony, put in evidence the testimony of seven witnesses to establish the fact that at the time of the bank robbery the Appellant was approximately 145 miles away in Roxbury, Massachusetts.
5. That the only issue that could be raised on appeal would be the credibility of witnesses.
6. That the credibility of witnesses being the exclusive province of the jury, is not by law an appealable issue.

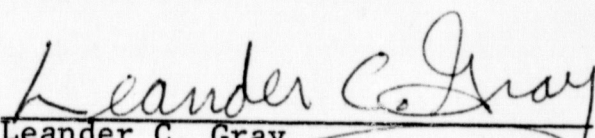


7. That, in the opinion of the undersigned, given the present status of the law, an appeal based upon the trial record must be considered frivolous.

WHEREFORE, the undersigned respectfully requests this Court for permission to withdraw as counsel for Appellant Catron and that Appellant be allowed time to raise such points as he may choose.

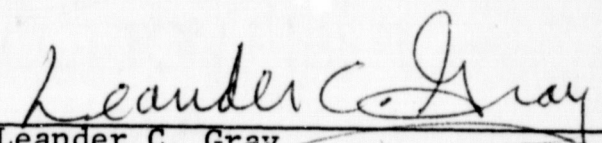
Dated at New Haven, Connecticut this 3rd day of May, 1974.

RESPECTFULLY SUBMITTED


Leander C. Gray

CERTIFICATION

I hereby certify that a copy of the foregoing motion was mailed, postage pre-paid, to Thomas F. Maxwell, Jr., Assistant United States Attorney, 915 Lafayette Boulevard, Bridgeport, Connecticut 06603; Thomas D. Clifford, Esq., Office of the Public Defender, District of Connecticut, 770 Chapel Street, New Haven, Connecticut 06510; and to Mr. Ronald Catron, 29066, Box No. 1000, E-1, Milan, Michigan 48160.


Leander C. Gray
361 Sherman Avenue
New Haven, Connecticut